

## **APPENDIX J**

### **Funding Operational Activities**

#### **I. Introduction**

The States believe that the NWPA creates an obligation on the Department of Energy to cover all costs related to SNF/HLW transportation, whether the funds flow through Section 180(c) or another funding mechanism.<sup>1</sup> They base their position on the NWPA Section 111(b)(4) that states one of the purpose of this subtitle is “to establish a Nuclear Waste Fund, ... that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste ...”

Since Section 180(c) has been interpreted by DOE’s Office of General Counsel as applying strictly to “training-related” activities, this issue paper explores other funding mechanisms available to pay for non-training activities. These activities may include inspections, tracking, escorting, public information, and other operational activities related to accident prevention and emergency response.

#### **I. Background**

In addition to training costs, states incur significant operational costs in connection with SNF/HLW shipments. Operational activities include inspections, escorts, staff time for satellite tracking, contingency route designation, and public information activities. The states strongly believe these activities contribute materially to safe routine transportation, as well as enhance public acceptance of shipment safety.

Past and present DOE shipping programs have established the precedent of providing financial assistance to states and tribes for these non-training shipment-related activities. Examples include the WIPP, Foreign Research Reactor, West Valley, and depleted uranium hexafluoride shipping programs.

DOE’s interpretation of Section 180(c) is that 180(c) funds cannot be used to fund operational activities. However, the states expect to have an even greater level of operational involvement with OCRWM’s shipments than they have had with past DOE shipping campaigns. Without funding to pursue these activities, the states would have to use their own tax dollars to cover these costs.

#### **II. Options Considered**

Option 1: Costs for operational activities are borne by the states. The states consider this option to be unacceptable. The Nuclear Waste Policy Act established the Nuclear Waste

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<sup>1</sup> “DOE must provide the states with financial and technical assistance for both training and operations activities as long as shipments continue along a shipping corridor,” from Principles of Agreement Among States On Expectations Regarding Preparations for OCRWM Shipments, February 2005

Fund to “... ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.”

Option 2: States agree to forgo operational activities. The states also consider this option unacceptable, as these activities contribute materially to both safe routine transportation and public acceptance. Further, this option would be inconsistent with the precedents set by other DOE shipping campaigns and with DOE’s commitment to work cooperatively with state, local, and tribal governments.<sup>2</sup>

Option 3: Fund operational activities through direct grants to the states, separate from Section 180(c) funding. This option would require negotiation between DOE and the states to determine what operational activities are appropriate for funding.

Option 4: Fund operational activities through the State Regional Groups (SRGs). This option would also require negotiations between DOE and the states to determine what operational activities would be funded.

### **III. Recommendation**

The Topic Group recommends that DOE commit to funding the same kind of transportation safety program that they support for WIPP shipments, to include the operational activities discussed above. The Topic Group feels that Option 3 (direct funding to the states), Option 4 (funding through the SRGs), or some combination of the two, would meet this objective.

The Topic Group further recommends that OCRWM work in conjunction with the Office of Environmental Management in order to take full advantage of DOE’s existing transportation infrastructure.

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<sup>2</sup> 2002 *Office of National Transportation Strategic Plan for the Safe Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste To Yucca Mountain: A Guide to Stakeholder Interactions*